

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Newport News Division

FILED

FEB - 8 2010

CLERK, U.S. DISTRICT COURT
NORFOLK, VA

RODNEY EDWARD JONES,

Petitioner,

v.

Criminal Action No. 4:07cr110
Civil Action No. 4:09cv76

UNITED STATES OF AMERICA,

Respondent.

ORDER

Currently before the court is a motion filed *pro se* by petitioner Rodney Edward Jones under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. Petitioner claimed in the motion that he received ineffective assistance from his former court-appointed counsel, Walter B. Dalton, because counsel allegedly failed to (1) hold the government to the terms of the plea bargain between them; (2) file for a suppression hearing with respect to petitioner's possession of a firearm; and (3) file a notice of appeal, despite purportedly being informed by petitioner to do so. By Order dated September 17, 2009, the court denied petitioner's motion with respect to grounds (1) and (2) and granted an evidentiary hearing before United States Magistrate Judge James E. Bradberry with regard to ground (3) for the sole purpose of determining whether defendant, in fact, instructed his former counsel to file a notice of appeal on his behalf in this case.

New counsel, Tyrone C. Johnson, was appointed to represent petitioner at the evidentiary hearing, which the Magistrate Judge conducted on November 20, 2009. At that hearing, the Magistrate Judge heard testimony from petitioner and from petitioner's former counsel, and on

January 6, 2010, the Magistrate Judge filed a Report and Recommendation (“R&R”) finding the testimony of petitioner’s former counsel to be credible and the testimony of petitioner not to be credible. Consequently, the Magistrate Judge recommended that this court adopt the R&R’s findings of fact and conclusions of law, and deny the remaining ground of petitioner’s motion.

By copy of the R&R, each party was advised of the right to file written objections to the findings and recommendations made by the Magistrate Judge within ten (10) days from the date the R&R was mailed. As of the date of this Order, this court has received no written objections or other response to the R&R from either party.

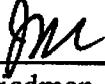
When reviewing a magistrate judge’s report and recommendation, a district court must make a *de novo* determination of those portions of the R&R to which objections, if any, are made. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1)(C). The district court is authorized to accept, reject or modify, in whole or in part, the findings and recommendations made by the magistrate judge. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1)(C).

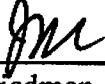
In the absence of any objections to the R&R from either party, the only issue before the court is the propriety of the Magistrate Judge’s recommendation that petitioner’s remaining claim be dismissed. The court has independently reviewed the R&R in its entirety and has found it to be without error. Accordingly, the findings of fact and conclusions of law contained therein are hereby **ADOPTED** in their entirety, and petitioner’s instant motion is hereby **DENIED** in its entirety and **DISMISSED**. Finding no substantial issue for appeal concerning the denial of a constitutional right affecting the conviction, nor a debatable procedural issue, a certificate of appealability is **DENIED**. See Miller-El v. Cockrell, 537 U.S. 322, 336 (2003).

The court advises petitioner that he may appeal from this denial of a certificate of appealability by forwarding a written notice of appeal to the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia, 23510 within sixty (60) days from the date of this Order.

The Clerk is **REQUESTED** to mail copies of this Order to petitioner, petitioner's former counsel Walter B. Dalton, petitioner's new counsel Tyrone C. Johnson, and the United States Attorney's Office in Newport News, Virginia.

IT IS SO ORDERED.



/s/ 
Jerome B. Friedman
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
February 8, 2010